

City of Newton
Massachusetts

MEMORANDUM

To: Advisory Committee Members for Newton's Housing and Community Development (HUD-funded) Programs

From: Steve Gartrell, Associate Director of Housing and Community Development

Re: Conflict of Interest Policy

Date: July 16, 2007

Background

HUD regulations governing the Community Development Block Grant (CDBG), Emergency Shelter Grant (ESG) and HOME Program set out conflict of interest provisions applicable to persons, including volunteers, who participate in the City of Newton's funding decisions. The City is ultimately responsible to HUD for the enforcement of the conflict of interest provisions. Accordingly, the Planning and Development Department has established a policy governing advisory committee members, as discussed below.¹

Policy

It is the policy of the City to implement the HUD CDBG, ESG, and HOME conflict of interest rules.

As provided in the HUD regulations, any housing or community development advisory committee member who has a financial interest in a Newton HUD-funded program may be in violation if they participate in discussions and in making recommendations about the use of Newton's HUD funds for their own or other programs in competition for that funding. Thus, committee members who have a conflict are expected to recuse themselves from participation, as further explained below. In some cases, committee members may be able to participate by obtaining an exception from HUD.

¹ This policy arises under the federal regulations. Recipients should take note that they also may be subject to the Massachusetts Conflict of Interest law. The City Solicitor's office is available to advise city officials, including committee members, concerning their obligations under the state Conflict of Interest law. As well, the State Ethics Commission maintains an informative website, which appears at the following link: <http://www.mass.gov/ethics/>

Whom the Policy Applies to:

- Advisory committee members who have a “financial interest” in a Newton Housing and Community Development (HUD-funded) program **IF** the advisory committee's role includes decision-making for that type of program (e.g., The director of a human services provider agency that receives Human Services Assistance Program (HSAP) funding, who is also on the Human Services Advisory Committee, because that committee makes decisions about HSAP funding).

This Policy Does Not Apply to:

- Members of advisory committees whose organization receives HUD funding from another source, such as a different governmental body or a separate Newton program, i.e. one that the advisory committee does not participate in decision-making (e.g., a member of the Newton Housing Partnership whose organization receives Human Services Assistance Program (HSAP) funding because the Partnership does not make decisions about HSAP funding).
- Non-paid board members or volunteers with a HUD-funded program who do not have a “financial interest” in a Newton HUD-funded program are not subject to this policy.

Financial Interest Defined

Having a “financial interest” includes (but is not limited to): being paid by a HUD-funded program as a staff person, contractor, or consultant. The rule applies whether the “financial interest” is for the committee member, or someone with whom they have business or immediate family ties, during their tenure or for one year thereafter.

Examples of persons with a “financial interest” may include: the executive director or other paid staff of an Newton HUD-funded agency; or a person providing consulting, architectural, legal, or engineering assistance under a contract to such an agency (however, such work done *pro bono* would not pose a conflict).

Committee members who need assistance determining whether they have a financial interest in an upcoming matter are urged to contact the Associate Director of Housing and Community Development. The Planning Department, conferring as appropriate with HUD and the City Law Department, can determine whether a conflict exists, and if so, the scope of the conflict. A committee member who has a

conflict of interest may apply to the Planning and Development Department to request an “exception” from HUD as described below.

Scope of Prohibited Activities

Committee members who have a financial interest in an agency, project, and/or program eligible to receive Newton HUD funding *may not*:

- Participate in committee discussions and votes concerning HUD-funding, under the purview of their committee, for which the agency, project, and/or program in which they have a financial interest seeks funding. As well, the scope of the prohibition extends to funding proposals under committee review where such agency may be in competition for funding.

For example, a member of Newton's housing advisory committee who is the executive director of a housing development agency that has received Newton HUD funds and expects to request such funds in the future should recuse him/herself from participation in discussion/voting concerning Newton's HUD funds.

For those committee members who have a financial interest, the Law Department has advised that recusal includes moving away from the committee table, and not participating as a committee member. Leaving the room is one clear way to demonstrate that the committee member is not participating. However, so long as the meeting is public, the committee member may stay in the room and participate as a member of the general public.

Penalties

If a committee member (with a financial interest in an agency) participates in such discussions and recommendations, they are in a conflict of interest position if the agency, project, and/or program with which they have a financial interest subsequently receives HUD funding. This restriction remains in place during their tenure on the committee and for one year thereafter.

An agency that has an employee, agent, consultant or officer who is in such a conflict of interest situation may not receive new Newton HUD funds so long as such person remains in the conflict situation, and for one year thereafter.

In addition, the City may suspend or terminate HUD funding for an agency whose employee, agent, consultant or officer is in such a conflict of interest situation.

Exception Process

The HUD regulations include a provision for exceptions, which may be granted by HUD's Field Office on a case-by-case basis when it determines that the exception will serve to further:

- o the purposes of the CDBG, HOME, or ESG Program; and
- o the effective and efficient administration of Newton's program or project.

A committee member may request an exception by submitting the attached Conflict of Interest Disclosure Form to the Planning and Development Department. After the required disclosure and determination by the Newton City Solicitor that the interest for which the exception is sought would not violate State or local law, the Planning Director will submit the request to HUD.

HUD Exception Provision

Exceptions: A Participating Jurisdiction (PJ) may request from HUD an exception to these provisions in writing. The PJ's request must include:

- o A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made;
- o An opinion of the PJ's or State recipient's attorney that the interest for which the exception is sought would not violate State or local law.

In determining whether to grant a requested exception after the participating jurisdiction has satisfactorily met these criteria, the HUD Field Office will consider the cumulative effect of the following factors, where applicable:

- o Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program which would otherwise not be available;
- o Whether the person affected is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interest or benefits as are being made available or provided to the group or class;
- o Whether the affected person has withdrawn from his or her function or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;

- o Whether the interest or benefit was present before the affected person was in a position constituting the conflict of interest.
- o Whether undue hardship will result either to the PJ or the person affected when weighed against the public interest served by avoiding the prohibited conflict.
- o Any other relevant considerations.

Regulatory citation: 24 CFR 92.356(a) - (e)